

# SENATE RECORD VOTE ANALYSIS

106th Congress  
1st Session

Vote No. 331

October 19, 1999, 2:54 p.m.  
Page S-12803 Temp. Record

## CAMPAIGN FINANCE/Party Restrictions (Current McCain-Feingold Bill), Cloture

**SUBJECT:** Campaign Finance Act . . . S. 1593. Daschle motion to close debate on the Reid perfecting amendment No. 2299 to the Daschle substitute amendment No. 2298.

### ACTION: CLOTURE MOTION REJECTED, 53-47

**SYNOPSIS:** As introduced, S. 1593, the Campaign Finance Act, will make all contributions to national political parties subject to "hard money" contribution limits and will subject "soft money" contributions to State and local parties to "hard money" limits if the money is spent in elections which include Federal candidates of those parties. ("Hard money" refers to a contribution the size of which is limited by law and which is subject to extensive reporting requirements; "soft money" refers to a contribution the size of which is not limited by law. Currently, contributions to political parties that are to be used for expressly advocating the election or defeat of particular candidates are subject to hard-money restrictions, and contributions for generic party activities, such as voter registration drives, are regulated as soft-money contributions. National political parties must report soft money expenditures and other expenditures (such as expenditures for issue advocacy, which is to advocate particular viewpoints rather than candidates). Soft money and issue advocacy expenditures by other groups, such as the Trial Lawyers Association or labor unions, are not subject to FEC reporting requirements.) The bill will also make it an "unfair labor practice" for a labor union to fail to tell those non-union employees who are required by law to pay for union representation that they may file written requests (that must be honored) to have their payments reduced by a percentage equal to the percentage of their payments that are being spent on political activities. (The Supreme Court has found that it is illegal for unions to use payments from non-union employees for political purposes if they object; it has not ruled on the legality of unions using dues from union members for political purposes against the objections of those members.)

The Daschle substitute amendment would impose most of the restrictions on campaign financing in the McCain/Feingold proposal upon which the Senate failed to invoke cloture last Congress (see 105th Congress, second session, vote Nos. 12 and 16).

The Reid perfecting amendment would strike all after the first line of the underlying amendment and would enact the

(See other side)

YEAS (53)			NAYS (47)		NOT VOTING (0)	
Republicans (8 or 15%)	Democrats (45 or 100%)		Republicans (47 or 85%)	Democrats (0 or 0%)	Republicans (0)	Democrats (0)
Brownback	Akaka	Kennedy	Abraham	Hatch		
Collins	Baucus	Kerrey	Allard	Helms		
Hutchinson	Bayh	Kerry	Ashcroft	Hutchison		
Jeffords	Biden	Kohl	Bennett	Inhofe		
McCain	Bingaman	Landrieu	Bond	Kyl		
Roth	Boxer	Lautenberg	Bunning	Lott		
Snowe	Breaux	Leahy	Burns	Lugar		
Thompson	Bryan	Levin	Campbell	Mack		
	Byrd	Lieberman	Chafee	McConnell		
	Cleland	Lincoln	Cochran	Murkowski		
	Conrad	Mikulski	Coverdell	Nickles		
	Daschle	Moynihan	Craig	Roberts		
	Dodd	Murray	Crapo	Santorum		
	Dorgan	Reed	DeWine	Sessions		
	Durbin	Reid	Domenici	Shelby		
	Edwards	Robb	Enzi	Smith, Bob (I)		
	Feingold	Rockefeller	Fitzgerald	Smith, Gordon		
	Feinstein	Sarbanes	Frist	Specter		
	Graham	Schumer	Gorton	Stevens		
	Harkin	Torricelli	Gramm	Thomas		
	Hollings	Wellstone	Grams	Thurmond		
	Inouye	Wyden	Grassley	Voinovich		
	Johnson		Gregg	Warner		
			Hagel			

#### EXPLANATION OF ABSENCE:

- 1—Official Business
- 2—Necessarily Absent
- 3—Illness
- 4—Other

#### SYMBOLS:

- AY—Announced Yea
- AN—Announced Nay
- PY—Paired Yea
- PN—Paired Nay

provisions of the underlying bill, as amended.

On October 15, 1999, Senator Daschle sent to the desk, for himself and others, a motion to invoke cloture on the Reid amendment.

NOTE: A three-fifths majority (60) vote is required to invoke cloture.

**Those favoring** the motion to invoke cloture contended:

For the past several years we have been trying to enact a comprehensive campaign finance reform bill. We have had majority support in the Senate, but we have not had the supermajority support of 60 Senators that we need in order to overcome filibusters against our efforts. Each year, we have made our proposals more modest, and each year the level of support for them has risen. Our proposal this year is to focus solely on soft money and the *Beck* decision regarding unions' political activities. Until this year, Democrats have been solidly behind our efforts. Republicans, with a few courageous exceptions, have been largely opposed. This year, though, it appeared as though the removal of last year's proposed restrictions on non-party independent expenditures could be enough to win the support of several more Republicans and finally gain cloture on this bill, especially if some Republican amendments were adopted. Unfortunately, this prospect appears to have spooked the Senate Democratic leadership, which has set up a parliamentary situation that has prevented any progress from being made with amendments. Those Senators who say they are for reform have effectively killed this bill this year.

The largest corrupting influence in Federal campaigns comes from the activities of political parties. Contributions in excess of \$100,000 are regularly given to each party. The parties actively solicit those large contributions. This activity is new to American politics. In 1980, political parties raised just \$20 million in soft money; in 1992, they raised \$102 million; in 1998, they raised \$224.7 million. The money comes primarily from corporations, but it is also given by unions and by rich individuals. Some corporations are obviously giving money not out of ideology but to buy favor, because they give equally huge sums to both sides. Union money goes almost entirely to the Democratic party, and Republicans have an advantage among corporate givers (though they did not when Democrats controlled Congress, and their advantage has been dwindling and it may be that corporate giving has reached parity). These increases would not be bad if it were not for the large increase in big-money contributors. If millions of Americans were giving just a few dollars each, we do not think that it would create corruption or the appearance of corruption in Federal elections. However, huge amounts are being given by single sources, sometimes to both parties at the same time.

These donations make the Republican and Democratic parties look like they are for sale, and they actually cause corrupt results in the legislative process. All types of special-interest earmarks are placed into appropriations bills in order to reward donors for their contributions. Anyone can look at the results of the bipartisan telecommunications bill, which has made telecommunication companies rich and raised prices for consumers, to see why so many companies like to give soft money to both parties. All types of ridiculously wasteful projects now receive funding. Recent examples include special handout for sewer infrastructure costs to prepare for the 2002 Winter Olympics in Utah and a disaster relief program for reindeer herders. Big contributions buy access. In the last presidential election, the Democratic National Committee advertised that anyone who gave \$100,000 or more would get to meet the President twice; Republicans promised lunch with the Republican Committee Chairman of the donor's choice for that size of a contribution. Both parties put price lists on the type of access that could be bought for donations.

During last year's debate Senators raised constitutional objections to our proposed limits on independent expenditures and issue advertising. We did not believe that those objections were valid last year, but this year the point is moot because we have removed those restrictions. Our colleagues have said this year that eliminating party soft money would be bad because it would force the money into independent expenditures, which they say would be worse than doing nothing because independent expenditures are less regulated and more negative than other campaigning. We disagree; not all of the money would go to independent expenditures, because many of the corporate givers say that they are only giving the money because of pressure from political party operatives. The approach taken by this year's bill is a huge step in the right direction. On that basis, we support cloture.

**Those opposing** the motion to invoke cloture contended:

The Reid amendment contains the text of this year's McCain/Feingold bill. The same approach has been taken as has been taken in previous years; rather than work with opponents of the bill, our colleagues have just discarded a few more of their objectionable ideas in the hope that a few more Republican Senators might say how wonderful the remaining objectionable ideas were. We are getting down to a bare-bones proposal with this bill. It has just two features: a proposal to gag political parties and a proposal that pretends to limit the ability of unions to spend money on politics without the permission of non-members who are forced, by law, to pay them for representation. This amendment is unconstitutional, unwise, partisan, and unworkable. We are as adamantly opposed to it now as we were last year. The Senate remains at an impasse.

This amendment would place strict contribution limits on all contributions to political parties. Those limits are of questionable constitutionality. The case that comes closest to giving an indication of how the Supreme Court will rule on the constitutionality

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of saying that all party contributions may be limited is *Colorado Republican Federal Campaign Committee v. FEC* (116 S.Ct. 2309 (1996)), which established that a party can act independently to work for the election or defeat of a candidate. That principle logically leads to the conclusion that if the party acts independently of the candidate, then any claim of corruption is pretty attenuated. Our colleagues are very pleased to report that they have removed the constitutional objections we raised last year to their proposed restrictions on issue advertising. They have accomplished that feat by removing those restrictions from this bill. In so doing, they have created a new, equal protection problem--why should everyone but political parties have a right to express themselves on issues?

The argument of constitutionality aside, however, the intent of this bill is simply wrong. Our colleagues want to control the amount of speech in elections. They admit that the restrictions on parties may just result in more spending that is totally independent of the political parties, but they believe that the net effect will be to decrease total campaign spending. We emphatically disagree that such a result should be favored. Elections for Federal office have large numbers of voters, and the only way candidates, or others, can reach those voters effectively is through broadcasting. If spending is limited, broadcasting will be cut, and democracy will suffer. Democracy cannot exist without free speech. The First Amendment right to free speech is much more than a guarantee of a personal liberty; it is a guarantee of a personal liberty that safeguards our republic and all other civic and personal liberties.

Our colleagues want to restrict contributions because they do not think it is right that some people can spend more on elections than can others; they think that ability violates the "one-man-one-vote" principle. They assume that the right to vote carries with it the implicit right to have an equal opportunity to influence others' votes. However, if they are going to take that position, then they cannot logically defend any other inability to spend equally on any other speech intended to affect the Government. Why say that all Americans must have an equal ability to influence an election, but not to criticize the Government or a Member through a press article or network news broadcast, or to organize a political rally, or to engage in any other normal form of political discourse? Suppose a small minority of Americans were going to be severely hurt by a proposed policy; would it be fair to say that they could not spend more so that more Americans would hear and know the justness of their cause? If not, they would be held to minimal spending as represented by their numbers and would suffer accordingly.

Relatedly, our colleagues say that spending needs to be reduced to cut the influence of "special interests," both to make the campaigns reflect the "real" issues and to stop politicians from supposedly catering to those special interests once elected. In response, we note that numerous studies show that Members' votes are determined primarily by party and ideology considerations. We also note that it is both normal and appropriate for legislators to respond disproportionately to the interests of some constituents, depending, for example, on their degree of organization or the intensity of their interest on particular issues. Unlike our colleagues, we do not think that it is inappropriate to have this type of pluralist democracy. We reject the implicit assumption that either legislators are to serve as patrician arbiters of competing interests rather than pursuing those ends that they support, or that we should have populist decision-making via polling data to determine the one-man-one-vote decision on every issue.

Senator McCain, on his web site, states "The rise in pork barrel spending is directly related to the rise of soft money, as Republicans and Democrats scramble to reward major donors to our campaigns." As an example of this "trichinosis attack" his site then lists an appropriation of "\$2.2 million for sewer infrastructure needs associated with the 2002 Winter Olympics in Utah." The Senators from Utah who requested and support this earmark are highly offended by that charge of corruption. Senator McCain has denied that he means that they were corrupt; we think the words we have quoted from his web site show otherwise. No one in the small town of Ogden, Utah, which will get the sewer improvements "bought" those improvements by making campaign contributions. That appropriation was rightly made. If the Senator from Arizona comes to the 2002 Winter Olympics, he may suddenly find that it is valuable to have adequate rest room facilities.

The supposedly corrupt contributions that are targeted by this particular bill are contributions to political parties. We emphatically reject that there is any automatic corruption or appearance of corruption from contributions to parties if those contributions are not directed to particular candidates. However, we recognize that such corruption is possible in particular cases, and we add that laws already exist to punish it. The problem is that they are not adequately enforced. A huge part of the impetus for this debate comes from the scandal surrounding the last presidential election, in which there is strong and broad evidence of corruption on the part of Democrats. Democrats response has been not to investigate the corruption and to prosecute those responsible, but to demand even more laws. More laws will not do any good when we have the Clinton Justice Department, which somehow is just not able to find any evidence of illegal and/or highly suspect activities by the Clinton campaign, even though those activities have been reported in every major newspaper. Those activities include the huge donations to Vice President Gore that supposedly came from impoverished Buddhist nuns and the apparent sale of a sensitive post at the Commerce Department to a foreign interest that contributed millions of dollars to the Clinton campaign.

At the same time as the Justice Department cannot discover what has been reported in every paper in the country it has managed to spend more than \$13 million of the taxpayers' money in pursuing Microsoft for alleged anti-trust violations. A large part of that money has been spent on a public relations campaign. Microsoft is largely responsible for our country's current prosperity. It has led the information revolution, creating tens of thousands of jobs, lowering the costs of doing business, and creating tremendous amounts of wealth. The Clinton Administration wants to crush it. Microsoft understandably objects and has lobbied Congress to

rein in the Justice Department. Our colleagues are quite offended by that action. They do not seem to think that Microsoft should be allowed to lobby or contribute more than a minuscule sum to political parties. In other words, our colleagues say that if Microsoft is under attack by the Government, it has only the right to shut up and take it. We respectfully disagree.

The particular attack taken by this bill is to ban political party soft money. No other soft money would be banned. Party spending has been growing in recent years. The growth in that funding was started by unions, and corporations and individuals eventually followed suit. Corporate giving to parties now far outstrips union giving. (That fact does not mean that corporations are participating more in elections than are unions; the vast majority of union campaign spending occurs in other, unreported areas). Democrats ordinarily look at corporations with suspicion. They seem to believe that Republicans have a large advantage in receiving corporate contributions. Consequently, many of them seem to think they will get a partisan advantage from wiping out party soft money. They may get that advantage, temporarily, but for reasons other than they imagine. Republicans currently have an advantage in corporate giving to parties, but, contrary to our Democratic colleagues' belief, that advantage is declining and recent reports indicate it may be gone entirely. Thus, at this point in time, both parties will probably lose roughly equal amounts of contributions. Democrats, though, have much more funding sources than Republicans.

Their largest advantage is the liberal bias of the media, more than 90 percent of whom say they are Democrats and the rest of whom we imagine find the Democrats a bit too conservative for their tastes. Republican candidates can only afford to put on a few campaign ads interspersed in hours worth of biased "news" programming by the media. Democratic candidates, on the other hand, run ads that just complement the free bias given them by the media.

Further, Democrats have the fervent backing of the unions, which engage in an immense amount of unregulated, unreported electioneering that is separate from their PAC contributions and soft money contributions. This bill pretends to address union spending, but its proposal is utterly worthless. It says only that those people who are not members of unions but who are forced by law to give them money may request, after the fact, that the unions give them back any of their money that has been spent on politics. However, they already have that right, but workers who have tried to get their money back have had difficulty making it through the bureaucratic hoops set up by unions. This bill will not block such union efforts; in fact, because our colleagues know that those efforts exist, this bill tacitly endorses them. Further, because most union political spending, including for political communications with union members and for get out the vote drives, is not tabulated accurately or even reported, it will not be possible to say accurately how much needs to be refunded. This bill will leave intact all of the unreported, unregulated spending by unions on Democrats.

Republicans do not have comparable sources of election funds. Thus, they will be disadvantaged if party soft money, which is one of the areas in which they can compete equally, is eliminated. We believe that this fact explains why this debate is once again partisan. Even a casual observer would have to have noticed that most of the Senators trumpeting the virtues of this legislation are Democrats, and all of its opponents are Republicans.

Eventually, though, we doubt that there would be any effect on the amount of money raised and spent on political activities. The amount of political spending of all types has grown in recent decades, but the reason has nothing to do with unartfully drafted campaign finance laws: that growth was inevitable, because the Federal Government has grown enormously, making the need for people to get involved in politics that much greater. (Frankly, considering the amount of money taken from the people in taxes by the Government and its intrusiveness in so many parts of their daily lives, we are surprised that more is not spent on elections. For instance, the average amount spent on two entire congressional campaigns is only enough money to pay for one 30-second Super Bowl commercial.) The restrictions that have been passed have not worked because they could not work. If people have a vital interest for wanting to be heard in a campaign and if restrictions are put on particular avenues for them to participate, they will then just find other avenues. The only way to stop those people from getting involved (which we do not want to do) would be to close all avenues for effective free expression.

By paring this bill down to just two proposals, Democrats risked that Republican amendments might be adopted that would make the bill balanced enough to pass. They seem to have been alarmed by that fact, because they offered amendments to make it effectively impossible for any changes to be made to the bill. That action was unfortunate. It may well be possible to come up with a truly bipartisan bill, with equal support from both parties.

On this bill, a few more Republicans will likely support cloture, but a few Republicans who supported the former bill will likely oppose cloture this time because they think this proposal is too narrow. In fact, we know many of the Democrats who will vote for cloture also oppose this pared-down bill. They have spoken against it vociferously on the Senate floor, but still they will vote for cloture. Therefore, this vote will overstate the level of support this proposal has. If anything, the consensus for it has declined. Frankly, we doubt that it has even majority support. Given the current parliamentary situation, we are wasting our time considering this bill. It is time to reject cloture and to move on to other matters.